

REMARKS

Claims 1-12, 14-16, and 33 are pending, with claims 13, 17-32, and 34 being withdrawn under protest. In that regard, a previous he Official Action mailed October 7, 2005 set forth a species election requirement between claims 1-16 and 33 and claims 17-32 and 34. In response thereto, Applicant had elected claims 1-16 and 33 with traverse. Instead of proceeding with examination of the case, Examiner has instead withdrawn that requirement and replaced it with a new one that, in effect, keeps the same two groups but takes one dependent claim from each group to make a third group. So the groups now appear to be set as claims 1-12, 14-16 and 33 ("Group I"), claims 17-28, 30-32 and 34 ("Group II"), and claims 13 and 29 ("Group III"). Applicant hereby elects Group I with traverse and has marked the other claims as withdrawn.

Examiner has further set forth a further species election requirement within Group I (also Group II but that is moot for now). Specifically, Examiner has taken the position that there are two sub-species represented by claims 5-8 and claims 9-12. Examiner does concede that claims 1-4, 4-16 and 33 are generic. Hence, for purposes of this further election, Applicant understands the claim groupings to be 1-8, 14-16 and 33 ("Group IA") and 1-4, 9-12, 14-16 and 33 ("Group IB"). While these sub-species restrictions are believed to be without merit, for sake of moving prosecution of this case forward once and for all, Applicant hereby elects Group IB with traverse, but requests that this election be withdrawn upon allowance of a generic claim.

Applicant notes that Examiner refuses to consider that the search effort for all species will overlap in determining the propriety of a species election requirement. That is incorrect. There is no need for an applicant to concede that claims are, or are not, patentably distinct under the circumstances of this case where the art is seemingly classified such that as

Examiner searches for any generic or species claim, she will necessarily encounter and have to consider the same art.

Conclusion

In view of the foregoing, Applicant requests withdrawal of the species election requirement(s) and, in any event, elects Group I, with claims 1-12, 14-16 and 33 being readable thereon and, to the extent it becomes necessarily, also elects Group IB with claims and 1-4, 9-12, 14-16 and 33 being readable thereon. Applicant respectfully solicits examination on the merits and a formal Notice of Allowance at the earliest opportunity. If any issues remain, Examiner is respectfully asked to telephone undersigned attorney in an effort to promptly resolve same, especially since this case is now well over two years old, and has yet to have the benefit of an examination on the merits.¹

Respectfully submitted,

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¹ This case is more than two years old, has had one species election requirement to which Applicant has responded, and now has a second round of the same (and, seemingly unnecessary since it merely relates to some dependent claims which issues could have been addressed in the first action on the merits). It is respectfully submitted that the time and resources spent already would have been better spent on substantive examination to move this case to a prompt conclusion.